

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 17, 2008

STATE OF TENNESSEE v. CHARLES EDWARD CLAYBROOKS, JR.

Appeal from the Criminal Court for Davidson County
No. 2006-A-97 Seth Norman, Judge

No. M2007-02685-CCA-R3-CD - Filed June 12, 2009

The Davidson County Grand Jury indicted Appellant, Charles Edward Claybrooks, Jr., for three counts of aggravated robbery and two counts of aggravated assault based upon an incident that occurred at The Athlete's Foot store on July 31, 2005. After a jury trial, Appellant was convicted of all counts. The trial court sentenced Appellant to an effective sentence of sixty years. Appellant now appeals arguing that the evidence was insufficient to support his conviction and that the trial court erred in imposing such lengthy and consecutive sentences. After a thorough review of the record, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which ALAN E. GLENN and D. KELLY THOMAS, JR., JJ., joined.

David G. Hirshberg, Nashville, Tennessee, for the appellant, Charles Edward Claybrooks, Jr..

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; Victor S. Johnson, District Attorney General, and Renee Erb, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On July 31, 2005, Autumn Chadwick, Jessica Morris and Mychael Carney were working at The Athlete's Foot store on Nolensville Road in Nashville, Tennessee. Appellant came into the store and spent an hour shopping in the store. As the clerks were ringing up Appellant's purchases and placing the purchases in bags, Appellant pulled out a gun. He told the clerks he would not hurt them and told them to keep bagging his purchases. At this point, two customers, David Villanueva and Maria Guadalupe, entered the store. Appellant took the clerks' cellular telephones. He turned to the

customers who had just entered the store and demanded that they give him their money and cellular telephones. They complied with his demand.

Ms. Chadwick noticed that both Ms. Guadalupe and Ms. Morris were shaking. Appellant told Mr. Carney to put the money from the cash register into a bag along with the customers' money. After the money was placed in the bag, Appellant ordered the clerks and the customers into the back of the store. Appellant saw the security camera monitors in the back of the store. Ms. Chadwick and Mr. Carney convinced Appellant that if they turned off the monitors, any video taken up to that point by the cameras would not be saved. They turned off the monitors. Appellant told the clerks and the customers to lie down on the ground for ten minutes. They remained on the floor until a former employee came and found them. They then closed the store and called 911.

Sergeant Jefferey Odom went to the store and recovered a fingerprint from a pair of athletic shoes handled by Appellant. When the videotape from the security cameras was presented at the trial, Sergeant Odom identified the shoes from which he lifted the fingerprint as the shoes that the individual in the videotape handled. Lorita Marsh, a police identification analyst, received the fingerprint recovered at The Athlete's Foot store. After analyzing the fingerprint, Ms. Marsh concluded that it was Appellant's fingerprint.

Detective Brandon Dozier, with the Metro Nashville Police Department, was involved with the investigation of the robbery at The Athlete's Foot store. He developed a photographic lineup that included a photograph of Appellant. Ms. Chadwick, Mr. Carney and the two customers all identified Appellant in the lineup.

In January of 2006, the Davidson County Grand Jury indicted Appellant for three counts of aggravated robbery and two counts of aggravated assault. A jury trial was held on June 18 and 19, 2007. At the conclusion of the trial, the jury convicted Appellant as charged. At a sentencing hearing, held on August 8, 2007, the trial court sentenced Appellant to thirty years as a career offender for each aggravated robbery conviction, the first two to run consecutively to each other and the remaining aggravated robbery sentence to run concurrently with the first two. The trial court also sentenced Appellant to fifteen years for each of the aggravated assaults, to run concurrently to each other and the sentences for aggravated robbery. Appellant's effective sentence is sixty years. Appellant filed a timely notice of appeal.

ANALYSIS

Sufficiency of the Evidence

Appellant argues that the evidence was insufficient to support his convictions. He argues that the State did not meet its burden of proof because it failed to present the testimony of Ms. Morris, Mr. Villanueva, and Ms. Guadalupe; the fingerprint analysis was not reliable; and Ms. Chadwick's description of the perpetrator's baseball cap as being all white with a New York logo and Mr. Carney's description of the cap as being blue and white with a New York logo constitute a fatal

discrepancy which “lead[s] to the inevitable conclusion that the witnesses were not telling the truth.” The State argues that the evidence was more than sufficient to support the convictions.

When a defendant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. A verdict of guilty, rendered by a jury and “approved by the trial judge, accredits the testimony of the” State’s witnesses and resolves all conflicts in the testimony in favor of the State. *State v. Cazes*, 875 S.W.2d 253, 259 (Tenn. 1994); *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). Thus, although the accused is originally cloaked with a presumption of innocence, the jury verdict of guilty removes this presumption “and replaces it with one of guilt.” *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with the defendant to demonstrate the insufficiency of the convicting evidence. *Id.* The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. *See* Tenn. R. App. P. 13(e); *Harris*, 839 S.W.2d at 75. In making this decision, we are to accord the State “the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom.” *See Tuggle*, 639 S.W.2d at 914. As such, this Court is precluded from reweighing or reconsidering the evidence when evaluating the convicting proof. *State v. Morgan*, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996); *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, we may not substitute our own “inferences for those drawn by the trier of fact from circumstantial evidence.” *Matthews*, 805 S.W.2d at 779. Further, questions concerning the credibility of the witnesses and the weight and value to be given to evidence, as well as all factual issues raised by such evidence, are resolved by the trier of fact and not the appellate courts. *State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990).

Appellant was indicted for aggravated robbery as found at Tennessee Code Annotated section 39-13-402(a)(1) which states, “Aggravated robbery is [‘the intentional or knowing theft of property from the person of another by violence or putting the person in fear’] . . . [a]ccomplished with a deadly weapon” (quoting T.C.A. § 39-13-401(a)). Appellant was also indicted for aggravated assault as found at Tennessee Code Annotated section 39-13-102(a)(1)(B) which states, “A person commits aggravated assault who . . . [i]ntentionally or knowingly [‘causes another to reasonably fear imminent bodily injury’] . . . and . . . [u]ses or displays a deadly weapon” (quoting T.C.A. § 39-13-101(a)(2)).

We conclude that the evidence was more than sufficient to support Appellant’s convictions. When taken in a light most favorable to the State, four witnesses positively identified Appellant from a photographic lineup that was admitted into court as evidence. Two witnesses testified at trial as to the specifics of the robberies and assault. They both testified that Appellant held a gun throughout the robbery. Additionally, the jury was allowed to view portions of the videotape collected from the security cameras that were recording at the time of the crime in which Appellant could be seen. Both Sergeant Odom and Ms. Marsh testified extensively, on both direct and cross examination, as to general fingerprint recovery and analysis, as well as, the specific recovery and analysis of the fingerprint collected at the scene. As stated above, it is the province of the jury to determine the

credibility of the witnesses and resolve all factual issues raised by the evidence. It is clear that the jury found the evidence to be sufficient. We find no basis to support a finding to the contrary.

Therefore, this issue is without merit.

Sentencing

Appellant also argues that the trial court erred in imposing an excessive sentence and ordering that two of his sentences from his aggravated robbery convictions be run consecutively. The State argues that there is ample support in the record for the imposition of the sentences.

“When reviewing sentencing issues . . . , the appellate court shall conduct a de novo review on the record of the issues. The review shall be conducted with a presumption that the determinations made by the court from which the appeal is taken are correct.” T.C.A. § 40-35-401(d). “[T]he presumption of correctness ‘is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances.’” *State v. Carter*, 254 S.W.3d 335, 344-45 (Tenn. 2008) (quoting *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991)). “If . . . the trial court applies inappropriate mitigating and/or enhancement factors or otherwise fails to follow the Sentencing Act, the presumption of correctness fails.” *Id.* at 345 (citing *State v. Shelton*, 854 S.W.2d 116, 123 (Tenn. Crim. App. 1992)). We are to also recognize that the defendant bears “the burden of demonstrating that the sentence is improper.” *Ashby*, 823 S.W.2d at 169.

In making its sentencing determination, the trial court, at the conclusion of the sentencing hearing, first determines the range of sentence and then determines the specific sentence and the appropriate combination of sentencing alternatives by considering: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the pre-sentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on the enhancement and mitigating factors; (6) any statistical information provided by the administrative office of the courts regarding sentences for similar offenses; (7) any statements the defendant wishes to make in the defendant’s behalf about sentencing; and (8) the potential for rehabilitation or treatment. T.C.A. §§ 40-35-210(a), (b), -103(5); *State v. Williams*, 920 S.W.2d 247, 258 (Tenn. Crim. App. 1995).

When imposing the sentence within the appropriate sentencing range for the defendant:

[T]he court shall consider, but is not bound by, the following *advisory* sentencing guidelines:

(1) The minimum sentence within the range of punishment is the sentence that should be imposed, because the general assembly set the minimum length of sentence for

each felony class to reflect the relative seriousness of each criminal offense in the felony classifications; and

(2) The sentence length within the range should be adjusted, as appropriate, by the presence or absence of mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114.

T.C.A. § 40-35-210(c) (emphasis added). However, the weight given by the trial court to the mitigating and enhancement factors are left to the trial court's discretion and are not a basis for an appellate court to reverse an imposed sentence. *Carter*, 254 S.W.3d at 345. "An appellate court is . . . bound by a trial court's decision as to the length of the sentence imposed so long as it is imposed in a manner consistent with the purposes and principles set out in sections -102 and -103 of the Sentencing Act." *Id.* at 346.

The trial court determined that Appellant was a Range III career offender. Appellant has six prior convictions for aggravated robbery in his pre-sentence report that was presented at the sentencing hearing. This is ample support for classification as a Range III career offender. *See* T.C.A. § 40-35-108(a)(1), (2). Aggravated robbery is a Class B felony. T.C.A. § 39-13-402(b). A Range III sentence for a Class B felony is twenty to thirty years. T.C.A. § 40-35-112(c)(2). Aggravated assault, as indicted, is a Class C felony. T.C.A. § 39-13-102(d)(1). A Range III sentence for a Class C felony is ten to fifteen years. T.C.A. § 40-35-112(c)(3). The trial court stated that Appellant was on parole at the time he committed the offenses in question. This fact constitutes an enhancement factor under Tennessee Code Annotated section 40-35-114(13)(B). The trial court set Appellant's sentences within the statutorily prescribed ranges.

As stated above, the weight given to enhancement and mitigating factors is in the trial court's discretion. We conclude that the trial court considered the sentencing principles and acted in accordance with the Sentencing Act in setting Appellant's sentences. Therefore, there is a presumption of correctness, and we find no error with regard to the length of Appellant's sentences.

Consecutive Sentences

Appellant also argues that the trial court erred in ordering two of his aggravated robbery sentences to be run consecutively to each other. The State argues that there is support for the trial court's imposition of consecutive sentences.

At the conclusion of the sentencing hearing, the trial court stated that it was ordering consecutive sentences based upon the fact that Appellant was on a release status at the time he committed the offenses and that Appellant is a professional criminal whose record is extensive.

Consecutive sentencing is governed by Tennessee Code Annotated section 40-35-115. A trial court may order sentences to run consecutively if it finds that one or more statutory criteria

listed in Tennessee Code Annotated section 40-35-115(b) exists by a preponderance of the evidence. T.C.A. § 40-35-115(b); *State v. Black*, 924 S.W.2d 912, 917 (Tenn. Crim. App. 1995). The existence of a single category is sufficient to warrant consecutive sentencing. *State v. Adams*, 973 S.W.2d 224, 231 (Tenn. Crim. App. 1991).

We first address the trial court's reliance upon the fact that Appellant was on release status at the time of the offense. Tennessee Code Annotated section 40-35-115(b)(6) provides that a trial court may order the sentences to run consecutively if a defendant is on probation at the time he committed the offense. In the case at hand, Appellant was on parole. Parole status is not addressed in Tennessee Code Annotated section 40-35-115(b). Therefore, this is not a statutory basis for ordering consecutive sentences.

The trial court also held that Appellant was a professional criminal. Tennessee Code Annotated section 40-35-115 states that if a trial court finds that a "defendant is a professional criminal who has knowingly devoted the defendant's life to criminal acts as a major source of livelihood," it may order the sentences to run consecutively when a defendant is convicted of multiple offenses. T.C.A. § 40-35-115(b)(1). When analyzing whether a defendant is a professional criminal for consecutive sentencing purposes, "appellate courts have typically considered the offender's age, criminal history, and constancy of regular employment." *State v. Clifford Leon Farra*, No. E2001-02235-CCA-R3-CD, 2003 WL 22908104, at *14 (Tenn. Crim. App., at Knoxville, Dec. 10, 2003), *perm. app. denied*, (Tenn. May 10, 2004).

At the time Appellant committed the offenses in question, he was thirty years old. According to the pre-sentence report, Appellant had six prior convictions for aggravated robbery based upon several incidents that occurred throughout September and October of 1996. At the time he committed the prior offenses he was twenty-two. As a result of these convictions, Appellant received an effective sentence of twenty-four years. Appellant also has other convictions for assault, casual exchange, and resisting arrest. As for employment, according to the pre-sentence report, Appellant informed his attorney that he had been employed at Wendy's Restaurant on White Bridge Road in Nashville and Ryan's Rental Construction Services. Appellant did not provide any dates of service. At some point he told the officer who prepared the pre-sentence report that he had worked at the Wendy's during a work release program from a prior incarceration. The officer was unable to locate a business named Ryan's Rental Construction Services.

Appellant has amassed a relatively lengthy criminal record in a short period of time. Appellant's convictions for the prior aggravated robbery offenses occurred on June 5, 1997. The offenses in the case at hand occurred on July 31, 2005. This was a mere eight years later, during which time he was serving his twenty-four year sentence for the prior aggravated robberies. We can only conclude, given the time frame, that Appellant committed the offenses at hand within a few months of being released on parole. Additionally, Appellant has relatively little employment history. We conclude that Appellant's criminal activity must be considered his major source of livelihood.

We find more than adequate support for the trial court's imposition of consecutive sentences based upon the conclusion that Appellant is a professional criminal.

CONCLUSION

For the foregoing reasons, we affirm the judgments of the trial court.

JERRY L. SMITH, JUDGE